

NATIONWIDE INSURANCE COMPANY
OF AMERICA

902 Ann Street, Suite A
Madison, Wisconsin 53713-2404

NAIC COMPANY CODE 25453

MARKET CONDUCT EXAMINATION REPORT
as of December 31, 2005

PREPARED BY INDEPENDENT CONTRACTOR FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

NATIONWIDE INSURANCE COMPANY OF AMERICA
902 Ann Street, Suite A
Madison, Wisconsin 53713-2404

MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2005

Prepared by
Kathleen M. Bergan, CIE
Independent Contract Examiner

March 30, 2007

Honorable Marcy Morrison
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Morrison:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., a limited market conduct examination of the private passenger automobile business practices of Nationwide Insurance Company of America has been conducted.

The Company's underwriting records were examined at the examiner's home, while the claims records were examined at the Company's Colorado regional office, 7979 East Tufts Avenue Parkway, Suite 1700, Denver, Colorado 80217.

The examination covered the period from January 1, 2005 to December 31, 2005.

A report of the examination of Nationwide Insurance Company of America is herewith, respectfully submitted.

Kathleen M. Bergan, CIE

Independent Market Conduct Examiner

**MARKET CONDUCT
EXAMINATION REPORT
OF
NATIONWIDE INSURANCE COMPANY OF AMERICA
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COMPANY PROFILE

Nationwide Insurance Company of America (hereinafter referred to as “NICOA” or the “Company”) was incorporated on June 30, 1960 as TIG Countrywide Insurance Company under the laws of the State of California. On December 31, 1997 Nationwide Mutual Insurance Company acquired the Company and its affiliates from TIG Insurance Company. The Company’s name was changed from TIG Countrywide to its present name on January 2, 1999. In addition, Nationwide Mutual Insurance Company contributed 100% of outstanding stock of the Company to Allied Group, Inc., another Nationwide affiliate.

The Company was licensed to transact business in Colorado on August 27, 1985.

As of December 31, 2005, the Company had reported premium in Colorado of \$3,153,000 for private passenger automobile insurance, representing a .11% market share.*

*Data as reported in the 2005 Colorado Insurance Industry Statistical Report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct examination report was prepared by an independent examiner contracting with the Colorado Division of Insurance (Division) for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado insurance law §10-1-204, C.R.S., which empowers the Commissioner of Insurance to supplement the Division's resources to conduct market conduct examinations. The findings in this report, including all work products developed in the production of this report, are the sole property of the Division.

The purpose of the examination was to determine the Company's compliance with certain Colorado insurance laws related to private passenger automobile insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Division. In reviewing material for this report the examiner relied primarily on records and material maintained and/or submitted by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2005 to December 31, 2005.

File sampling was based on a review of underwriting and claims files that were systematically selected using ACL™ software and computer data files provided by the Company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g., timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses private passenger automobile insurance and contains information regarding exceptions to Colorado insurance laws. The examination included review of the following:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting and Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance of such practices by the Division. Examination findings may result in administrative action by the Division.

EXAMINATION METHODOLOGY

The examination consisted of a review of the Company's private passenger automobile operations and management, underwriting, rating, and claims practices to determine compliance with the Colorado insurance laws as outlined in Exhibit 1.

Exhibit 1

Statute or Regulation	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Section 10-3-1103, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-403, C.R.S.	Standards for rates – competition – procedure – requirement for independent actuarial opinions regarding 1991 legislation.
Section 10-4-404.5, C.R.S.	Rating plans – property and casualty type II insurers – rules.
Section 10-4-413, C.R.S.	Records required to be maintained.
Section 10-4-602, C.R.S.	Basis for cancellation.
Section 10-4-603, C.R.S.	Notice.
Section 10-4-604, C.R.S.	Nonrenewal.
Section 10-4-605, C.R.S.	Proof of notice.
Section 10-4-609, C.R.S.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610, C.R.S.	Property damage protection against uninsured motorists.
Section 10-4-611, C.R.S.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613, C.R.S.	Glass repair and replacement.
Section 10-4-614, C.R.S.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-618, C.R.S.	Unfair or discriminatory trade practices – legislative declaration.
Section 10-4-626, C.R.S.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6.
Section 10-4-627, C.R.S.	Discriminatory standards – premiums – surcharges – proof of financial responsibility requirements.
Section 10-4-628, C.R.S.	Refusal to write – changes in – cancellation – nonrenewal of policies prohibited.
Section 10-4-629, C.R.S.	Cancellation-renewal-reclassification.
Section 10-4-630, C.R.S.	Exclusion of named driver.
Section 10-4-632, C.R.S.	Reduction in rates for drivers aged fifty-five or older who complete a driver's education course – legislative declaration.
Section 10-4-633, C.R.S.	Certification of policy and notice forms.
Section 10-4-634, C.R.S.	Assignment of payment for covered benefits.
Section 10-4-642, C.R.S.	Prompt payment of direct benefits - legislative declaration - definitions.
Insurance Regulation 1-1-6	Concerning The Elements Of Certification For Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act"
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Insurance Regulation 5-1-2	Application and Binder Forms

Insurance Regulation 5-1-10	Rate and Rule Filing Submissions Property and Casualty Insurance
Insurance Regulation 5-2-1	Relative Value Schedule for No-Fault.
Insurance Regulation 5-2-2	Concerning Renewal of Automobile Insurance Policies – Excluded Named Drivers
Insurance Regulation 5-2-12	Concerning Automobile Insurance Consumer Protections
Insurance Regulation 5-2-15	Concerning Consumer Protection for Vehicle Valuation and Rental Reimbursement
Insurance Regulation 6-1-1	Limiting coverage

Company Operations and Management

The examination consisted of a review of Company management, quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Complaint Handling

The examination consisted of a review of complaints entered into the Division's complaint database compared against the Company's complaint log to determine complaint activity and accuracy of recording.

Underwriting and Rating

For the period under examination, systematically selected samples of underwriting files were taken as follows:

Review Lists	Population	Sample Size	Percentage to Population
Cancellations/Nonrenewals	28	28	100%
Surcharges	885	None provided	0%
Conversion to NICOA Policies/In-force	4,542	50	1%

The examiner also reviewed rate and rule filings, statistical justifications, and methodology submitted to the Division for the period under examination. This information was compared against a sample of in-force policies rated by coverage selection to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations. A sample of agents submitting new business was verified against the Division's producer database for licensing compliance.

Claims Practices

For the period under examination, the following claims samples were systematically selected to determine compliance with claims handling practices and manual rules:

Review Lists	Population	Sample Size	Percentage to Population
Claims Paid	26	26	100%
Claims Closed Without Payment	4	4	100%

EXAMINATION REPORT SUMMARY

During September of 2005, the Company began renewing policies that had previously been written by Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company and Nationwide Property and Casualty Insurance Company. As a result of the policy migration from the three (3) other Nationwide companies to NICOA, nonrenewal notices were sent to all policyholders informing them of the nonrenewal of their policies by the former companies and policy transfer to NICOA.

The Company did not write a significant amount of direct business in Colorado prior to September 2005. Therefore, the primary focus of this market conduct examination centered on underwriting and the impact or effect the transfer of these policies had on insureds. Since this block of business was transferred to an affiliate, no new application process was performed for these existing policyholders. A sample of policies that had been written in the other three Nationwide companies was traced from actual policy coverage and premium pages to those of NICOA to ensure that the same coverage chosen by an insured was properly transferred and verified according to the Companies' documentation.

The examination resulted in six (6) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado.

Company Operations and Management:

In the area of company operations and management the following two (2) issues were identified:

- **Issue A: Failure of the Company to include some forms in use on the annual forms certification list.**
- **Issue B: Failure of the Company to provide surcharge notices and related documentation for examination.**

Complaint Handling:

In the area of complaint handling, no issues are addressed in this report.

Underwriting and Rating:

In the area of underwriting and rating, the following three (3) issues were identified:

- **Issue C: Failure, in some cases, to comply with Colorado insurance law when nonrenewing a policy.**
- **Issue D: Failure, in some cases, to state a sufficiently clear and specific reason for nonrenewal of a policy.**
- **Issue E: Failure of the Company to provide insureds with a notice of premium increase.**

Claims Practices:

In the area of claims practices, the following one (1) issue was identified:

- **Issue F: Failure to provide a complete disclosure of the provisions of the unfair or discriminatory trade practices law to beneficiaries or claimants within three (3) business days after a claim is made.**

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Division.

Results of previous market conduct examinations of the Company are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

NATIONWIDE INSURANCE COMPANY
OF AMERICA

PERTINENT FACTUAL FINDINGS

COMPANY OPERATIONS AND MANAGEMENT

Issue A: Failure of the Company to include some forms in use on the annual forms certification list.

Section 10-4-633, C.R.S., Certification of policy and notice forms, states in part:

- (1) All insurers providing automobile insurance and who are authorized by the commissioner to conduct business in Colorado shall submit an annual report to the commissioner listing any policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner issued or delivered to any policyholder in Colorado. Such listing shall be submitted no later than July 1 of each year and shall contain a certification by an officer of the organization that to the best of the officer's knowledge each policy form, endorsement, or notice form in use complies with Colorado law. The necessary elements of the certification shall be determined by the commissioner.
- (3) The commissioner shall have the power to examine and investigate insurers authorized to conduct business in Colorado to determine whether automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of proposed reductions in coverage, and such other forms as may be requested by the commissioner comply with the certification of the organization and statutory mandates.

Colorado Insurance Regulation 1-1-6, Concerning The Elements Of Certification For Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms, Preneed Funeral Contracts and Excess Loss Insurance in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act" promulgated pursuant to §§ 10-1-109, 10-4-419, 10-4-633, 10-15-105 and 10-16-107.2 and 10-16-119, C.R.S., states in part:

Section 4. Definitions

For the purposes of this regulation:

- A. "Annual Report for automobile private passenger insurance" shall mean a list of all automobile private passenger policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the commissioner currently in use and issued or delivered to any policyholder in Colorado, including the titles of the programs or products affected by the forms.

Section 5. Rules

- B. Not later than July 1 of each year, each private passenger automobile insurer, commercial automobile with an "individually-owned private passenger automobile-type endorsement" which is attached to a commercial automobile policy, preneed contract and claims-made liability insurer shall file an Annual Report of policy forms including a fully-executed certificate of compliance.

During the review of the annual forms, it was noted that the Company was using forms which were not listed on the annual forms certification. The following is a list of forms in use by the Company during the period under examination which were not certified:

<u>Form Number</u>	<u>Description</u>
15677CO (05-05)	Notice of policy/carrier change
JLN0031S (01-05)	Policy information

Recommendation Number 1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-633, C.R.S., and Colorado Insurance Regulation 1-1-6. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has filed a complete annual certification which includes all forms currently being used and implemented necessary procedural changes in order to ensure future compliance with Colorado insurance law.

Issue B: Failure of the Company to provide surcharge notices and related documentation for examination.

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

- (1) Every insurer, rating organization, or advisory organization and every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization to the extent that the insurer uses the rates, rating plans, rating systems, or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, ... Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

Section 5. Policy Records

- A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are

readily available to market conduct examiners as required under this regulation.

B. Policy records shall include at least the following:

- (4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

The Company did not provide any surcharges for review for the period covered by this examination.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Surcharges

Population	Sample Size	Number of Exceptions	Percentage to Sample
885	50	50	100%

A sample of fifty (50) private passenger automobile policies containing surcharges, representing 5.65% of all policies containing surcharges during the examination period was requested for review. However, the Company did not produce any surcharge notices or other related documentation regarding the basis for the surcharge during the course of this examination.

Recommendation Number 2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-413, C.R.S., and Colorado Insurance Regulation 1-1-7. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its procedure for record maintenance and implemented necessary changes in order to ensure future compliance with Colorado insurance law.

UNDERWRITING AND RATING

Issue C: Failure, in some cases, to comply with Colorado insurance law when nonrenewing a policy.

Section 10-4-629, C.R.S. Cancellation - renewal - reclassification states in part:

- (1) *Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.*
- (2) *An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:*
- (9) This section shall not apply to any insurance policy or coverage that has been in effect less than sixty days at the time notice of cancellation, nonrenewal, or reclassification is mailed or delivered by the insurer, unless it is a renewal policy. [Emphases added.]

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 5 Rules

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by § 10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

- b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled “Your right to Protest”, the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company’s action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

4. Basis for cancellation of an automobile insurance policy.

- b. In the case of policies which have been in effect for more than sixty (60) days, an insurer may only cancel a policy affording the coverages required by §10-4-620, C.R.S., only if the cancellation is based on one of the following reasons:
 - (1) Nonpayment of premium (§10-4-602, C.R.S.); or
 - (2) The driver’s license or motor vehicle registration of either the named or any operator either residing in the insured’s household, or who customarily operates an automobile insured under the policy, has been under suspension or revocation during the policy period, or if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date (§10-4-602, C.R.S.); or
 - (3) The applicant knowingly made a false statement on the application for insurance (§10-4-602(1)(c), C.R.S.); or
 - (4) The insured knowingly and willfully made a false material statement on a claim submitted under the policy (§10-4-602(1)(d), C.R.S.).

In the examiner’s review of policies nonrenewed during the period under examination, it was noted that some policies that were in effect more than sixty (60) days, and in some cases had inception dates as far back as 1979, were treated as new business cancellations when the policies were cancelled subsequent to being transferred to the Company from one of the other three (3) Nationwide affiliates. Since there was no application process when these policies were migrated from one of the other three (3) Nationwide companies to NICOA, these policies should have been treated as nonrenewals instead of new business cancellations.

In correspondence dated April 29, 2005, to the Division explaining the intent to transfer policies from the three (3) other Nationwide companies into NICOA, the following information was included:

Our intent is to migrate current Nationwide policyholders to the NICOA Company as those policies renew beginning with September 15, 2005 renewals. *All current Nationwide customers will be offered new coverage in NICOA.* It is not our intent to reduce our portfolio as part of this action. NICOA’s renewal underwriting standards will

be applied at the first policy renewal after the transfer. The migration will be completed within one renewal cycle.

Our intent is to write in NICOA all new business that would have come through the named Nationwide companies beginning September 15, 2005.

As part of the policy migration, it will become necessary to issue nonrenewal notices to existing Nationwide policyholders. *As it is our intent to offer replacement coverage to every Nationwide insured, we have modified the standard nonrenewal notice in an effort to soften the impact.*” [Emphases added.]

The Company sent out non-specific blanket nonrenewal notices to existing policyholders beginning in July 2005, explaining the transfer program and indicating that current insureds did not need to take any action as a NICOA policy would be issued at the time of renewal. However, it appears that the Company treated these existing policyholders as new business instead of nonrenewals, in that they were sent a ten (10) day cancellation notice if the company found significant incidents such as DWI, out-of-state license, suspended license, etc., in the insured’s driving record when the policy was transferred.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Nonrenewals

Population	Sample Size	Number of Exceptions	Percentage to Sample
26	26	15	58%

An examination of twenty six (26) private passenger automobile nonrenewal files, representing 100% of all nonrenewals handled by the Company during the examination period, showed fifteen (15) exceptions (58% of the sample) wherein the Company failed to comply with Colorado insurance law by canceling existing policyholders with only a ten (10) day notice.

Recommendation Number 3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its procedures for canceling or nonrenewing existing policies and implemented procedural changes in order to ensure compliance with Colorado insurance law.

Issue D: Failure, in some cases, to state a sufficiently clear and specific reason for nonrenewal of a policy.

Section 10-4-629, C.R.S. Cancellation - renewal - reclassification states in part:

- (1) *Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.*
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. *The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:*
 - (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;
 - (b) The proposed effective date of the action;
 - (c) The insurer's actual reasons for proposing to take such action. *The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry.* Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2). [Emphases added.]

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 5 Rules.

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice

required by § 10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

- b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your right to Protest", the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

In the examiner's review of notices that were sent to policyholders whose coverage was nonrenewed to NICOA, it was noted that the Company appeared to treat existing policyholders as new business, and issued cancellation notices that did not include the specific reason(s) for the cancellation, instead of nonrenewal notices with the required reason(s) for nonrenewal.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Nonrenewals

Population	Sample Size	Number of Exceptions	Percentage to Sample
26	26	15	58%

An examination of twenty-six (26) underwriting cancellations representing 100% of all files provided by the Company during the examination period showed fifteen (15) exceptions (58% of the sample) wherein the Company failed to state a clear and specific reason for nonrenewal on the notice mailed to the insured as required by Colorado insurance law. The Company treated existing policyholders as new business when the policies were cancelled subsequent to being transferred into NICOA from one of the Nationwide affiliates.

Recommendation Number 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has implemented necessary changes to its nonrenewal notifications to ensure compliance with Colorado insurance law.

Issue E: Failure of the Company to provide insureds with a notice of premium increase.

Section 10-4-629, C.R.S., Cancellation - renewal – reclassification, states in part:

- (1) *Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.*
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. *The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:*
 - (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;
 - (b) The proposed effective date of the action;
 - (c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).
 - (d) If there is coupled with the notice an offer to continue or renew the policy in accordance with this section, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;
 - (e) The right of the insured to replace the insurance through an assigned risk plan;
 - (f) The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice;

- (g) That, if a protest is filed by the insured, the current insurance will remain in effect until a determination is made by the commissioner upon payment of any lawful premium due or becoming due prior to the determination;
 - (h) The authority of the commissioner to award reasonable counsel fees to the insured for services rendered to the insured in connection with any such hearing if the commissioner finds the proposed action of the insurer to be unjustified.
- (9) This section shall not apply to any insurance policy or coverage that has been in effect less than sixty days at the time notice of cancellation, nonrenewal, or reclassification is mailed or delivered by the insurer, unless it is a renewal policy. [Emphases added.]

Section 10-4-630, C.R.S., Exclusion of named driver, states in part:

- (1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 5 Rules.

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by § 10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.

- b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled “Your right to Protest”, the following premium payment instructions: In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company’s action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

The examiner requested a sample of fifty (50) policies that had been surcharged by the Company during the examination period. However, the Company was unable to provide any of the requested surcharge notices for the period under examination.

The following chart illustrates the significance of error versus the population and sample requested:

Private Passenger Automobile Surcharges

Population	Sample Size	Number of Exceptions	Percentage to Sample
885	50	50	100%

Due to the absence of surcharge notifications, the following required elements could not be determined for compliance:

- Reason for increase;
- Named driver exclusion offer options;
- Right to protest provision;
- Timely notification of an increase in premium;
- Notification of the Colorado assigned risk plan;
- Whether the increase was excessive or discriminatory;
- Whether the Company used citations without convictions;
- Whether not-at-fault accidents were used;
- Whether the Company used accidents with less than \$1,000 in payment;
- The separate amount of increase apart from renewal premium;
- Whether the percentage of increase was in compliance with Company underwriting rules;
- Whether the Company used uninsured motorists, towing, or comprehensive claims;
- Whether the Company used an incident within a 15-month period before the proposed action date.

Recommendation Number 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-4-629, and 10-4-630, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has revised its procedures to ensure that a certified surcharge notification form is sent to all policyholders where a premium increase is evident at renewal as required by Colorado insurance law.

CLAIMS PRACTICES

Issue F: Failure to provide a complete disclosure of the provisions of the unfair or discriminatory trade practices law to beneficiaries or claimants within three (3) business days after a claim is made.

Section 10-4-618, C.R.S., Unfair or discriminatory trade practices - legislative declaration, states in part:

- (1)(b) The general assembly declares that the purpose of this section is:
 - (I) To safeguard the public against monopolies, trusts, and market barriers and to foster and encourage competition by prohibiting unfair and discriminatory insurance practices that impede fair and honest competition;
 - (II) To ensure that all consumers benefit from such competition and expansion; ...
- (3) An insurer or its agent that issues or renews a policy shall:
 - (f) Provide oral or written notice of the provisions of this section to the beneficiary or claimant within three business days after a claim is made;
- (4) An insurer is not required to furnish the notices required by this section more than once to each beneficiary or claimant for each claim.

The Company is required to provide oral or written notice regarding the provisions of this section to the beneficiary or claimant within three (3) business days after a claim is made. In review of the claims files provided, there appeared to be no evidence in any of the files that the Company complied with this requirement.

Recommendation Number 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-618, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its claims handling procedures to ensure that the provisions of the unfair or discriminatory trade practices law are provided to beneficiaries or claimants within three (3) business days after a claim is made as required by Colorado insurance law.

Summary of Issues and Recommendations

ISSUE	REC #	PAGE
Company Operations and Management		
Issue A: Failure of the Company to include some forms in use on the annual forms certification list.	1	15
Issue B: Failure of the Company to provide surcharge notices and related documentation for examination.	2	17
Underwriting and Rating		
Issue C: Failure, in some cases, to comply with Colorado insurance law when nonrenewing a policy.	3	21
Issue D: Failure, in some cases, to state a sufficiently clear and specific reason for nonrenewal of a policy.	4	24
Issue E: Failure of the Company to provide insureds with a notice of premium increase.	5	27
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Issue F: Failure to provide a complete disclosure of the provisions of the unfair or discriminatory trade practices law to beneficiaries or claimants within three (3) business days after a claim is made.	6	30

Independent Market Conduct Examiner
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participated in this examination and in the preparation of this report.